

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 10-11784-RGS

JAMES F. HALL

v.

JOHNSON & JOHNSON, DEPUY, INC,
and X CORPORATION A-Z,
(A CORPORATION FICTITIOUSLY NAMED),
and JOHN DOES 1-10

ORDER ON
DEFENDANTS' MOTION TO DISMISS
FOR LACK OF PERSONAL JURISDICTION

May 2, 2011

STEARNS, D.J.

In this case, a plaintiff living in Edinburgh, Scotland, who received a defective shoulder implant in Zurich, Switzerland, that had been manufactured in St. Priest, France, and was later removed at a hospital in Dundee, Scotland, seeks to sue two U.S. companies in Massachusetts, neither of which is incorporated in Massachusetts, has a principal place of business here, or was involved in the manufacture or sale of the defective prosthesis. To state the issue is to decide the motion.

While plaintiff James Hall recently (today) filed a motion to amend his Complaint, the proposed amendment is futile. *See Resolution Trust Corp. v. Gold*, 30 F.3d 251, 253 (1st Cir. 1994). Neither of the two proposed new corporate defendants

was involved in the manufacture of the Delta III prosthesis. Even if the court were to disbelieve the Elberg Declaration in this regard, the motion to amend still fails to cure the jurisdictional defect. Although these suggested new defendants may have a family affiliation with the French manufacturer of the prosthesis, “[t]here is a presumption of corporate separateness that must be overcome by clear evidence that the parent in fact controls the activities of the subsidiary.” *Escude Cruz v. Ortho Pharm. Corp.*, 619 F.2d 902, 905 (1st Cir. 1980) (internal citations omitted).¹

ORDER

For the foregoing reasons, the motion to dismiss for lack of personal jurisdiction is ALLOWED. The Clerk may now close the case.

SO ORDERED.

/s/ Richard G. Stearns

UNITED STATES DISTRICT JUDGE

¹ Even if there were some thread on which jurisdiction in Massachusetts might hang, I would allow defendants’ alternative request that the case be dismissed on the basis of forum non-conveniens. *See* 28 U.S.C. § 1404(a).